

Effective 11/16/2021

Superseded 5/3/2023

77-20-201 Right to bail -- Capital felony.

- (1) An individual charged with, or arrested for, a criminal offense shall be admitted to bail as a matter of right, except if the individual is charged with:
 - (a) a capital felony when the court finds there is substantial evidence to support the charge;
 - (b) a felony committed while on parole or on probation for a felony conviction, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;
 - (c) a felony when there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that the individual would constitute a substantial danger to any other individual or to the community, or is likely to flee the jurisdiction of the court, if released on bail;
 - (d) a felony when the court finds there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that the individual violated a material condition of release while previously on bail;
 - (e) a domestic violence offense if the court finds:
 - (i) that there is substantial evidence to support the charge; and
 - (ii) by clear and convincing evidence, that the individual would constitute a substantial danger to an alleged victim of domestic violence if released on bail;
 - (f) the offense of driving under the influence or driving with a measurable controlled substance in the body if:
 - (i) the offense results in death or serious bodily injury to an individual; and
 - (ii) the court finds:
 - (A) that there is substantial evidence to support the charge; and
 - (B) by clear and convincing evidence, that the person would constitute a substantial danger to the community if released on bail; or
 - (g) a felony violation of Section 76-9-101 if there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that the individual is not likely to appear for a subsequent court appearance.
- (2) Notwithstanding any other provision of this section, there is a rebuttable presumption that an individual is a substantial danger to the community under Subsection (1)(f)(ii)(B):
 - (a) as long as the individual has a blood or breath alcohol concentration of .05 grams or greater if the individual is arrested for, or charged with, the offense of driving under the influence and the offense resulted in death or serious bodily injury to an individual; or
 - (b) if the individual has a measurable amount of controlled substance in the individual's body, the individual is arrested for, or charged with, the offense of driving with a measurable controlled substance in the body and the offense resulted in death or serious bodily injury to an individual.
- (3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section 76-5-202, aggravated murder, is a capital felony unless:
 - (a) the prosecuting attorney files a notice of intent to not seek the death penalty; or
 - (b) the time for filing a notice to seek the death penalty has expired and the prosecuting attorney has not filed a notice to seek the death penalty.